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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94864; File No. SR-CboeEDGX-2022-026]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

May 6, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2022, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/) [sic], at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equities") by amending the fee associated with fee code DQ. The Exchange proposes to implement these changes effective May 2, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market

participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity.

The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity.

Specifically, the proposed rule change amends the fee assessed to orders that yield fee code DQ under the Fee Codes and Associated Fees table of the Fee Schedule. Fee code DQ is appended to Midpoint Discretionary Orders (“MDOs”)⁴ using the Quote Depletion Protection (“QDP”) order instruction.⁵ QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGX Book and enabling Users to avoid potentially unfavorable executions

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 22, 2022), available at https://markets.cboe.com/us/equities/market_statistics/.

⁴ See Exchange Rule 11.8(g).

⁵ See Exchange Rule 11.8(g)(10).

by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.⁶ Currently, MDOs entered with the QDP instruction are appended the fee code DQ and are assessed a fee of \$0.00020 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00. The proposal would increase the fee assessed under fee code DQ to \$0.00040 per share in securities at or above \$1.00. The Exchange seeks to align the fee assessed to orders appended with fee code DQ with the current fee assessed by the Exchange's affiliate exchange, Cboe EDGA Exchange, Inc. ("EDGA"), which currently assesses a fee of \$0.00040 per share in securities at or above \$1.00 and 0.30% of dollar value for securities priced below \$1.00.⁷ The Exchange does not propose to change the fee assessed for orders yielding fee code DQ priced below \$1.00.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the objectives of Section 6 of the Securities and Exchange Act of 1933 [sic] (the "Act"),⁸ in general, and furthers the objectives of Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁰ requirements

⁶ See Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR-CboeEDGX-2020-010).

⁷ See Cboe EDGA Exchange Fee Schedule, Fee Code and Associated Fees, Fee Code DQ.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that the proposed amendment to increase the fee associated with fee code DQ is reasonable, equitable and not unfairly discriminatory. The Exchange believes the proposed increase is reasonable because the proposed change represents a modest fee increase for an optional order instruction. Members may continue to submit MDOs without the QDP order instruction if they do not wish to incur the slightly increased fee. Users may also opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange further believes that the proposed change is reasonable because the proposed fee remains consistent with pricing offered by the other exchanges and does not represent a significant departure from the Exchange's general pricing structure. Specifically, the proposed fee applicable to fee

code DQ is equal to that of the Exchange's affiliate, EDGA, which currently assesses a fee of \$0.00040 for MDOs submitted to EDGA with a QDP order instruction. In addition, the proposed fee is equal to the fee currently offered by the Nasdaq Stock Market LLC ("Nasdaq"), for its Midpoint Extended Life Order ("M-ELO")¹¹ in securities priced at or above \$1.00.¹² The Exchange believes that the proposed fee is reasonable as it is competitive with the fee assessed by EDGA for its MDOs appended with the QDP order instruction and the fee Nasdaq charges for M-ELO executions, which offer similar protective features to MDOs entered with the QDP order instruction on the Exchange. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory because both the MDO order type and the associated QDP order instruction are available to all Users on an equal and non-discriminatory basis, and any User that chooses to use the QDP instruction would be uniformly subject to the same proposed fee. The Exchange notes that the QDP instruction is optional and market participants who do not wish to incur the increased flat fee can continue to enter MDOs without the QDP instruction.

B. Self-Regulatory Organization's Statement on Burden on Competition

¹¹ Nasdaq's Midpoint Extended Life Orders are non-displayed orders pegged to the midpoint of the NBBO that do not execute until the passage of at least 10 milliseconds after the order has been accepted by the System. See Nasdaq Rules, Equity 4, Section 4702(b)(14).

¹² See Nasdaq Rules, Equity 7, Pricing Schedule, Section 118(a)(1), (2), (3). Nasdaq assesses a fee of \$0.0004 per share when executed at a price at or above \$1.00. Nasdaq does not charge a fee for M-ELO executions in securities priced below \$1.00. See Nasdaq Rules, Equity 7, Pricing Schedule, Section 118(b).

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to the fee assessed on orders that yield fee code DQ will apply to all such orders equally in that all MDO orders utilizing the QDP order instruction will be assessed the proposed slightly higher fee. The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed change does not represent a significant departure from pricing currently offered by the Exchange or pricing offered by other equities exchanges. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share¹³. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed,

¹³ Supra note 3.

participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’...”.¹⁵

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁵ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2022-026 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2022-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2022-026, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).